

TENTATIVE RULINGS for CIVIL LAW and MOTION

May 20, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: Forster v. Patel

Case No. CV G 09-2748

Hearing Date: May 20, 2010 Department Fifteen 9:00 a.m.

Defendant's unopposed motion to compel responses to form interrogatories, set no. one, and demand for inspection of documents, set no. one is **GRANTED**. (Code Civ. Proc., §§ 2030.290, subd. (b) & 2031.300, subd. (b).) Plaintiff shall serve verified answers to the form interrogatories and inspection demand and all responsive documents, without objections, **by June 18, 2010**.

The unopposed request for monetary sanctions against Plaintiff is **GRANTED**. (Code Civ. Proc., §§ 2030.290, subd. (c) & 2031.300, subd. (c); Dec. of Julie Koyama, ¶ 3.) Plaintiff Tirca Forster shall pay sanctions in the amount of \$290.00 to defendant by **June 18, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Holman v. Wachovia Dealer Services, Inc.

Case No. CV CV 09-1369

Hearing Date: May 20, 2010 Department Fifteen 9:00 a.m.

Plaintiff's motion for attorney's fees: This motion is made pursuant to Civil Code sections 1780, subdivision (d) and 2983.4.

Where an award of fees under the Consumers Legal Remedies Act ("CLRA") (Civ. Code, §§ 1750 *et seq.*) and/or the Rees-Levering Motor Vehicle Sales and Finance Act ("ASFA") (Civ. Code, §§ 2981 *et seq.*) was found proper in the cases cited by the parties, the record before the trial court substantiated the plaintiff's CLRA and/or ASFA claim(s). In *Reveles v. Toyota by the Bay* (1997) 57 Cal.App.4th 1139, 1154, disapproved on other grounds in *Gavaldon v. Daimler Chrysler Corp.* (2004) 32 Cal.4th 1246 and *Snukal v. Flightways Mfg., Inc.* (2000) 23 Cal.4th 754, the appellate court held that the plaintiff was entitled to an award of attorney's fees

under the CLRA, after noting that the plaintiff had produced “substantial and uncontroverted evidence” that the defendant’s conduct violated the CLRA. In *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 153, the appellate court held the fact that the plaintiff achieved a settlement, after receiving favorable jury verdicts on her CLRA and ASFA claims, mandate a finding that the plaintiff was the “prevailing party” under those statutes. (*See also Hayward v. Ventura Volvo* (2003) 108 Cal.App.4th 509 (affirming award of fees under the CLRA in a case where the plaintiff obtained a jury verdict in his favor); *Cobian v. Ordonez* (1980) 103 Cal.App.3d Supp. 22, 31 (finding award of fees under the ASFA proper in a case where it was also found proper for the trial court to summarily adjudicate the claim for restitution).)

Although a trial on the merits is not required where the plaintiff seeks to recover attorney’s fees under the CLRA and/or ASFA following a pre-trial settlement, the plaintiff must establish that his CLRA and/or ASFA claims were not frivolous, unreasonable, or groundless. Plaintiff must establish some minimal basis for finding that his CLRA and ASFA claims had merit. Plaintiff has not met this burden. This Court’s April 15, 2010, ruling invited the plaintiff to submit evidence to satisfy his burden under the CLRA and ASFA. Plaintiff chose not to do so. There is no *evidence* before this Court to show that the plaintiff’s ASFA and/or CLRA claims have any factual merit. Accordingly, the plaintiff’s motion for attorney’s fees is **DENIED**.

Defendant’s motion to tax costs: An award of costs is proper under Civil Code sections 1780, subdivision (e) and 2983.4 and Code of Civil Procedure section 1032. (*Reveles v. Toyota by the Bay, supra*, 57 Cal.App.4th at 1151.) This motion is **GRANTED IN PART** as follows. The motion to tax costs of \$343.00 under Item 13 and \$153.50 under item 5 of the memorandum of costs filed on January 25, 2010, is **GRANTED**. Plaintiff shall recover \$475.00 in costs from the defendant.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **HSBC Bank USA, National Association, as Trustee v. Bojorquez**
Case No. CV UD 10-655

Hearing Date: **May 20, 2010** **Department Fifteen** **9:00 a.m.**

Defendants’ motion to set aside the entry of default and default judgment is **DENIED**. (Code Civ. Proc., § 1008.) The Court previously decided this motion on April 29, 2010. A motion for reconsideration must be filed within ten days of the entry of the order and based on new facts, circumstances or law. Defendants’ motion was filed more than 10 days after notice of entry of the order and is not based on new facts, circumstances or law.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Portfolio Recovery Associates, LLC v. Oleary
Case No. CV G 09-3170

Hearing Date: May 20, 2010 **Department Fifteen** **9:00 a.m.**

The unopposed petition to confirm arbitration award by Portfolio Recovery Associates, LLC is **DENIED WITHOUT PREJUDICE**. (Code Civ. Proc., § 1286.) There is no proof of service showing service of the petition on the respondent.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Wells Fargo Bank, N.A. et al. v. County Fair Fashion Mall, et al.
Case No. CV CV 10-753

Hearing Date: May 20, 2010 **Department Fifteen** **9:00 a.m.**

The motion for order appointing receiver is **GRANTED**. (Code Civ. Proc., § 564, subds. (b)(9) & (11); *Barclays Bank of California v. Superior Court* (1977) 69 Cal.App.3d 593; Verified Complaint, Exhibits A-L; Dec. of Weiss ¶¶ 1-27; Supplemental Dec. of Weiss ¶¶ 1-37, Exhibits A-E.)

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff is to prepare a formal order pursuant to California Rules of Court, rule 3.1312.